

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 119, “Record Check Evaluations for Health Care Programs,” Iowa Administrative Code.

The amendments change the chapter title to more accurately reflect the requirements for record check evaluations by employers and training programs. The amendments also clarify when evaluation must be requested for current employees or students and persons who have been previously evaluated.

The amendments revise documents that are to be included with requests for child abuse checks. In addition, the amendments add a new subrule regarding possible restrictions as a result of an evaluation and revise procedures for notification of persons being evaluated.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0324C** on September 5, 2012. The Department received a number of comments on the Notice of Intended Action.

The first comment stated that subrule 119.2(2) should stay true to statutory language, specifically Iowa Code section 135C.33(7). The Department agreed with the commenter and struck “learns from any source” and inserted the following change to the amendment as proposed in the Notice of Intended Action: “receives credible information as determined by the entity.”

Another comment concerned proposed paragraph 119.3(1)“e” and inquired why the Department required a copy of the documentation of the person’s previous evaluation if exemption is requested. In response, the Department did not adopt the proposed amendment.

An additional comment stated that, under proposed paragraphs 119.4(3)“a” and “b,” it appeared the prospective employee would need reevaluation and a Notice of Decision (NOD) issued whenever the employee changes to a similar position and is entitled to the exemption from evaluation. In response, the Department noted that a subsequent employer may choose to review a previous NOD, after the employer has determined the person’s criminal and abuse background did not result in new information warranting a DHS evaluation, and may determine that an employee can or cannot commence employment with a different licensed facility covered by Iowa Code section 135C.33 without further action by the Department. The subsequent employer does not need a reevaluation; however, the employer may choose to request a reevaluation and may employ the person while the reevaluation is being performed.

Another commenter asked why the prospective employee’s evaluation would be valid for only 30 days and stated that, if no further infractions are committed, the evaluation should be valid indefinitely. The Department’s evaluation results and NOD are based on required documentation (see 119.3(1)) provided by the requesting entity. The Department would not be aware of any new infractions and would only be able to issue an NOD based on the required documentation received. Required documentation from the requesting entity includes criminal and child and dependent adult abuse information within 30 days of the time the request is made. Extending the NOD would result in an NOD which potentially could exclude any “new” criminal or child or dependent abuse information.

Another comment inquired whether these rules accounted for a process by which a requesting entity may voluntarily seek a background or criminal abuse evaluation from the Department when the subject of the evaluation is not employed at the facility or is a student of a nursing training program or certified nurse aide training program. In other words, the comment was a request to include prospective students and a therapy training program in the rules. In response, the Department has the authority to perform an evaluation on prospective students of certified nurse aide training programs as defined in Iowa Code section 135C.33(8) and nursing training programs as defined in Iowa Code section 152.2. No changes were made as the result of this comment.

These amendments do not provide for waivers in specified situations because there is no provision for implementation of waiver in the law. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 217.6 and 2012 Iowa Acts, Senate File 2164.

These amendments will become effective February 1, 2013.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 119**, title, as follows:

**RECORD CHECK EVALUATIONS FOR HEALTH CARE PROGRAMS
CERTAIN EMPLOYERS AND EDUCATIONAL TRAINING PROGRAMS**

ITEM 2. Amend **441—Chapter 119**, preamble, as follows:

PREAMBLE

These rules establish procedures for the performance of record check evaluations by the department of human services for personnel employed by health care facilities and other ~~health care~~ programs ~~listed in Iowa Code section 135C.33~~ and for students in educational training programs for nurses and certified nurse aides. Record check evaluations are performed, at the request of a prospective employer or training program, on persons who have been found to have been convicted of a crime under a law of any state or have a record of founded child or dependent adult abuse, to determine whether the crimes or founded abuses warrant prohibition of employment or enrollment in a training program.

ITEM 3. Amend rule 441—119.1(135C) as follows:

441—119.1(135C) Definitions.

“Department” means the department of human services.

“Health care program” means any of the facilities and programs listed in Iowa Code chapter 135C that are subject to record check evaluations.

“Requesting entity” means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can be employed by the entity or participate in an educational training program and includes the following:

1. Health care facilities as defined in Iowa Code section 135C.1.
2. Programs in which the provider is regulated by the state or receives any state or federal funding and the employee being evaluated provides direct services to consumers including but not limited to programs that employ homemakers or home health aides, programs that provide adult day services, hospices, federal home- and community-based services waiver providers, elder group homes, and assisted living programs.
3. Substance abuse programs for juveniles as described in Iowa Code section 125.14A.
4. Hospitals as defined in Iowa Code section 135B.1.
5. Psychiatric medical institutions for children as defined in Iowa Code section 135H.1.
6. The department as described in Iowa Code section 217.44.
7. Department institutions as defined in Iowa Code section 218.13.
8. Child foster care facilities as defined in Iowa Code section 237.1.
9. Medicaid home- and community-based services waiver providers as defined in Iowa Code section 249A.29.
10. Certified nurse aide training programs as defined in Iowa Code section 135C.33(8).
11. Nursing training programs as described in Iowa Code chapter 152.

ITEM 4. Amend rule 441—119.2(135C) as follows:

441—119.2(135C) When record check evaluations are requested.

119.2(1) *Record check evaluations on prospective employees and students.* ~~Health care programs~~ A requesting entity shall request a record check evaluation ~~when they decide to consider for employment~~ prior to employment or enrollment of a person whose background check indicates a criminal or dependent adult abuse or child abuse record. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or

students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same ~~health care program~~ employment or training program, unless an exemption is provided in these rules.

119.2(2) *Record check evaluations on current employees and students.* ~~Employers may~~ A requesting entity shall request a record check evaluation on current employees and students when a current ~~employee's~~ employee or student background check indicates a criminal conviction (other than an Iowa Code chapter 321 simple misdemeanor or equivalent simple misdemeanor offense from another jurisdiction) or dependent adult or child abuse record and the requesting entity intends to continue to employ the employee or to continue the student's enrollment in a training program. ~~An employer may~~ The requesting entity shall request a current criminal or dependent adult or child abuse record check when the ~~employer learns from any source~~ entity receives credible information as determined by the entity that a current employee or student has a criminal or dependent adult or child abuse record that has not been previously evaluated at the ~~health care program~~ considered by the requesting entity.

119.2(3) *Transfer of ~~employment~~ employee between facilities.* If a person owns or operates more than one facility, and an employee of one of the facilities is transferred to another facility without a lapse in employment, the facility is not required to request additional criminal or abuse record checks of the employee or obtain a new record check evaluation.

119.2(4) *Exceptions to record check evaluation requirements for employment or participation in a training program in facilities licensed under Iowa Code chapter 135C.* If an evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment, the person may commence employment with a different licensed facility covered by Iowa Code section 135C.33 without further action by the department subject to the following conditions:

a. The record check performed by the subsequent employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

b. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

c. Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

d. The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed.

e. Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

f. The subsequent employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

ITEM 5. Amend rule 441—119.3(135C) as follows:

441—119.3(135C) Request for evaluation.

119.3(1) *Required documentation.* The ~~employer~~ requesting entity and the prospective employee or student shall complete and ~~the employer shall~~ submit Form 470-2310, Record Check Evaluation, to the department to request an evaluation. The ~~employer~~ requesting entity shall submit the form and required documentation to the Department of Human Services, Central Abuse Registry, ~~1305 East Walnut P.O. Box 4826, Des Moines, Iowa 50319-0114~~ 50305-4826. The department shall not process evaluations that are not signed by the prospective employee or student. The position sought or held must be clearly written on the first page of Form 470-2310, Record Check Evaluation. Form 470-2310 shall be accompanied by the following documents:

a. A copy of the documentation of the ~~applicant's~~ person's status on the DCI criminal history database generated within 30 days of the ~~time that~~ date on which the request for evaluation is submitted to the department.

b. A copy of the Iowa criminal history data, if there is a history, as provided to the ~~employer~~ requesting entity by the division of criminal ~~investigations~~ investigation.

c. A copy of the documentation of the ~~applicant's~~ person's status on the dependent adult abuse registry generated within 30 days of the ~~time that~~ date on which the request for evaluation is submitted to the department.

d. A copy of the documentation of the person's status on the child abuse registry generated within 30 days of the date on which the request for evaluation is submitted to the department.

119.3(2) Additional documentation.

a. The ~~employer~~ requesting entity may provide or the department may request from the prospective employee or ~~employer~~ student or from the requesting entity information to assist in performance of the evaluation that includes, but is not limited to, the following:

- (1) Documentation of criminal justice proceedings.
- (2) Documentation of rehabilitation.
- (3) Written employment references or applications.
- (4) Documentation of substance abuse education or treatment.
- (5) Criminal history records, child abuse information, and dependent adult abuse information from other states.

(6) Documentation of the applicant's prior residences.

b. Any person or agency that might have pertinent information regarding the criminal or abuse history and rehabilitation of a prospective employee or student may be contacted.

~~c. The department may check the child abuse registry during a record check evaluation. If there is a record of child abuse, the department shall consider the information in the child abuse record in reaching a decision regarding employability.~~

ITEM 6. Amend rule 441—119.4(135C) as follows:

441—119.4(135C) Completion of evaluation.

119.4(1) No change.

~~119.4(2) Notice of decision. The department shall issue a notice of decision in writing to the employer that requested the record check evaluation. The department shall send a copy of the notice of decision to the person who has applied for employment, if the person's address is available. If the address is not available, the department shall send the prospective employee's copy of the notice to the employer.~~

~~a. The notice shall be valid only for employment with the employer that requested the record check evaluation.~~

~~b. The notice shall not be valid for employment with any other prospective employer.~~

~~c. Record check evaluations are valid for employment that commences within 30 days from the date of notice of decision.~~

~~d. The notice of decision shall contain the notice of right to appeal.~~

119.4(2) Evaluation conclusions.

a. The department may determine the following:

- (1) The person may be employed by the entity or enroll in the training program with no restrictions.
- (2) The person may be employed by the entity or enroll in the training program with restrictions.
- (3) The person may be employed by the entity or enroll in the training program with restrictions specific to a position within the program.

(4) The person may not be employed by the entity or enroll in the training program.

b. Restrictions on a person's employment or enrollment status shall be based upon what is necessary for the protection of the person or persons receiving care.

c. Medicaid waiver consumer-directed attendant care evaluations shall determine that either the person may work or the person may not work pursuant to Medicaid law.

119.4(3) Notice of decision. The department shall issue a notice of decision in writing to the requesting entity. The requesting entity is responsible for providing a copy of the notice to the prospective employee or student.

a. The notice shall be valid only for employment with the employer or enrollment in a training program that requested the record check evaluation.

b. The notice shall not be valid for employment with any other prospective employer or enrollment in another training program.

c. Record check evaluations are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, the requesting entity shall request another evaluation. "Start employment or attend the training program" means to begin to receive a salary or take classes.

d. The notice of decision shall contain the notice of right to appeal.

[Filed 11/15/12, effective 2/1/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.